Mr. Ramani relied on the case of *Ganesh Krishna v. Emperor*[1], which is a decision of the Sind Judicial Commissioner's Court in 1911. But, so far as I have been able to discover that is an isolated case — (Mr. Ramani himself informed me that he had not been able to discover any other case to support his first ground of appeal) and the decision in that case was not followed in at least three other Indian cases, namely, *Manhari v. Emperor*[2], *Tulsi Telini v. Emperor*[3] and *Maksuddan v. Emperor*[4].

Nor was a similar submission — i.e. that persons cannot be charged in the alternative with offences under the Penal Code and with offences under other Enactments — viewed with favour by the learned Judge in the case of *Supramanian v. Public Prosecutor*[5].

Accordingly the first ground of appeal fails.

As regards the second ground of appeal, Mr. Ramani submitted that since the two Detective Police Constables were investigating whether *Chee fah* lotteries were being carried on, and the warning relating to the possibility of being bribed had been given to them by their superior Police Officer at the same time as he gave them instructions to conduct the police investigation, therefore the statements made by them with regard to the act of the appellant in bribing them were made in the course of that police investigation.

I am unable to agree with that submission. The two Detective Police Constables were sent out to investigate whether they could obtain any information regarding the carrying on of *Chee fah* lotteries. If they had discovered any information concerning such lotteries, then any statement regarding the information so discovered would have been a statement in a police investigation. But in the course of that investigation an entirely different set of circumstances arose, i.e. they were bribed by the appellant. Thereupon a fresh offence had been committed and they both made police reports concerning it. Because their superior Police Officer had been sufficiently prudent to anticipate that there might be an attempt to bribe them, and had given them instructions how to act in that event, it cannot be said that those reports were statements made in the course of a police investigation into the existence of a *Chee fah* lottery. To hold otherwise would be to exclude a police report relating to murder, if for instance the appellant, instead of bribing the Detective Police Constables, had stabbed one of them fatally.

Accordingly the second ground of appeal must fail.

As to sentence, the maximum imprisonment for an offence under section 3 (b) of the Prevention of Corruption Enactment, 1938, is two years. The appellant, who is a first offender, was sentenced to 15 months rigorous imprisonment. I regard this as excessive, and reduce it to 9 months rigorous imprisonment. Since the appellant has been on bail, the imprisonment will run from the date of this judgment.

Conviction upheld — Sentence reduced.

ARJAN SINGH v. PUBLIC PROSECUTOR.

[Ct. of Cr. App. (Willan, C.J. Malayan Union, Murray-Aynsley, C.J. Singapore, Pretheroe, J.) Sept. 18, 1947]
[Perak — Cr. Appeal No. 117/47]

Penal Code, S. 385 — Attempted extortion — Writing a letter of threat but not posting — Preparation.

The mere act of writing and detaining a letter is not an attempt to commit extortion but at the most a preparatory step towards the commission of that offence. The gist of the offence of extortion is putting another person in fear of an injury, and similarly to support a conviction for attempted extortion it must be shown that the intending extortioner has done some act with this intention.

COURT OF APPEAL.

Appellant in person.

M. G. N. Neal (Crown Counsel) for the Respondent.

The Judgment of the Court was delivered by :—

Willan, C. J. : — At their trial the appellant and one Gurmukh Singh were jointly charged as follows :—

(1) That you on or about the 16th day of April, 1947, at Ipoh in the State of Perak, in order to the committing of extortion, did put one Ong Thuan Chye in fear of injury to his person, and you have thereby committed an offence punishable under section 385 of the Penal Code.

(2) That you on or about the 24th day of April, 1947, at Ipoh in the State of Perak, in order to the committing of extortion, did attempt to put one Magappan Chettiar in fear of death, and you have thereby committed an offence punishable under section 387 of the Penal Code.

Both accused were found guilty on both charges and the appellant was sentenced to two years rigorous imprisonment and to twelve strokes with a rattan on the first charge, and to two years rigorous imprisonment on the second charge. The two terms of imprisonment were ordered to run concurrently. Appellant appealed against both the convictions and sentences.

Briefly stated the facts were as follows :—

On the 14th and 15th of April last one Ong Thuan Chye received a letter demanding the payment of $5,000 and containing threats. He took this letter to the Police. On the 23rd April the Police searched the house occupied by the appellant and one Gurmukh Singh and there found a locked wooden chest. In this chest was found another letter addressed to Ong Thuan Chye which referred to a previous demand and warned the recipient that "this letter is last and final". Also a key was found in the same chest which fitted the door of another house also occupied by the appellant. When this second house was searched two more extortionate letters were discovered in the drawer of a writing table which were addressed to two Chettiars in Ipoh. The handwritings in the letter received by Ong Thuan Chye, the letter found in the chest and the two letters found in the drawer of the writing table were similar. Gurmukh Singh produced the key which was used to open the wooden chest and he admitted writing the letter received by Ong Thuan Chye. He endeavoured to explain that he did not understand the intent behind that letter but this, quite rightly in our opinion, was rejected by the trial Judge. When this explanation is rejected the only connection between the appellant and the letter received by Ong Thuan Chye appears to be that the writer of that letter lived in the same house as the appellant and that letters in similar handwriting were found in another house also occupied by the appellant. In our opinion these facts, though they raise grave suspicion, are not sufficient to prove beyond reasonable doubt that the appellant was aware of the contents of the letter addressed to Ong Thuan Chye or indeed that he had any knowledge of that letter at all. For this reason the conviction on the first charge must be quashed.

On the second charge the evidence is clear that the letters addressed to the two Chettiars were found in the drawer of a writing table and there was no evidence of any attempt to transfer them by any means to the addressees. The mere act of writing and detaining a letter is not an attempt to commit extortion but at the most a preparatory step towards the commission of that offence. The gist of the offence of extortion is putting another person in fear of an injury and similarly to support a conviction for attempted extortion the intending extortioner must have done some act with this intention. For this reason the conviction on the second charge is also quashed and the appeal of Arjan Singh allowed on both charges.

With regard to Gurmukh Singh he was convicted on both charges and sentenced as follows :—

1st Charge : 2 years R.I. and 12 strokes of the rattan.

2nd Charge : 2 years R.I. concurrently with the sentence on the 1st Charge.

Since Gurmukh Singh did not appeal we are unable to make any order with regard to his conviction on the second charge.

But, for the same reasons as set out in paragraph 3 of this judgment in respect of the conviction of Arjan Singh on the second charge we consider Gurmukh Singh's conviction on that second charge was wrong. We recommend that His Excellency the Governor should exercise his power of pardon in respect of the sentence of Gurmukh Singh on that second charge.

If such power is exercised it will make no difference to the sentence now being served by Gurmukh Singh, because the sentences on both his convictions have been ordered to run concurrently.

Appeal Allowed.

NIK HASSAN BIN NIK HUSSIN & ANOTHER v. PUBLIC PROSECUTOR.

[Ct. of Cr. App. (Willan, C.J. Malayan Union, Murray-Aynsley, C.J. Singapore and Carey, J.) September 4, 1947]
[Kelantan — Criminal Appeal No. 67/47]

Penal Code, S. 402 — Assembling with others for the purpose of committing gang robbery — Conspiracy — Evidence Enactment S. 10.

The appellants in this case were convicted in the High Court at Kota Bahru of assembling with others for the purpose of committing gang robbery contrary to S. 402 of the Penal Code. The allegation of the prosecution was that at about 1.30 a.m. on the 10th December, 1944, nine men assembled at a hut on a piece of high ground under scrub for the purpose of committing robbery at the house of one Sulaiman about 100 to 200 yards distance.

Held, that on a charge of assembling with others to commit gang robbery, the purpose of the assembly must be proved. When the only evidence of this was technically inadmissible, the conviction would be set aside.

COURT OF APPEAL.

Appellants in person.

C. M. Sheridan (Crown Counsel) for the Respondent.

The Judgment of the Court was delivered by :—

Willan, C. J. : — These two Appellants were convicted in the High Court at Kota Bharu of assembling with others for the purpose of committing gang robbery contrary to Section 402 of the Penal Code and were sentenced to 5 years R.I. each.